

**BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001**

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY**

**Complaint on Sunday
and Holiday Collections**

Docket No. C2001-1

**DOUGLAS F. CARLSON
ANSWER IN OPPOSITION TO POSTAL SERVICE
MOTION FOR CERTIFICATION OF APPEAL**

September 4, 2001

Presiding Officer's Ruling No. C2001-1/10 directed the Postal Service to provide an electronic version of certain data elements from the national Collection Box Management System (CBMS) database in response to DFC/USPS-19.¹ Fashioning a reasonable compromise between potentially overly restrictive protective conditions and the Postal Service's asserted security interest in the data, the presiding officer permitted the Postal Service to exclude the address of each box. Otherwise, the ruling directed the Postal Service to provide all data elements requested in DFC/USPS-19. The ruling also directed the Postal Service to provide all data elements requested in DFC/USPS-19, including box address, under protective conditions. The Postal Service has now filed a motion to certify an appeal to the Commission.² This motion, filed more than three months after I filed interrogatory DFC/USPS-19, represents yet another meritless Postal Service tactic to delay resolution of the issues in this proceeding.

Rule 32(b)(1)(i) prohibits the presiding officer from certifying an appeal unless the presiding officer finds that the ruling "involves an important question of law or policy concerning which there is substantial ground for difference of opinion." The purpose of this rule is to exclude appeals from interlocutory rulings except for issues of unusual

¹ POR C2001-1/10, filed August 21, 2001.

² Motion of the United States Postal Service for Certification of Appeal from Presiding Officer's Ruling No. C2001-1/10, filed August 28, 2001 ("Motion for Certification").

importance. The bar for certification is high. Faced with this high standard, the Postal Service has applied several coats of high-gloss varnish to dress up a mundane discovery dispute. After the varnish is stripped away, the following two issues remain as the supposedly important questions of law or policy:

1. Should the Postal Service be required to produce CBMS records for the entire country, or should the Postal Service be permitted to produce CBMS records for only the 27 districts that have, in the recent past, conducted early collections on the eves of holidays? Resolution of this question turns on the narrow issue of the relevance of the nationwide data for districts beyond the 27 already identified.
2. Should the Postal Service be granted protective conditions covering the release of data that do not include the box address and for which the Postal Service has not even attempted to articulate a security concern?

These issues are not important issues of law or policy justifying an interlocutory appeal. The Postal Service has painted itself into a corner by rejecting the principle of informal consultation to resolve discovery disputes, and now the Postal Service wants the presiding officer to bail out the agency by certifying this appeal. POR C2001-1/10 was correct, and the presiding officer should deny the motion to certify this appeal.

Relevance of Nationwide CBMS Data

A brief review of the flurry of documents filed concerning DFC/USPS-19 demonstrates the extent to which the Postal Service could have avoided the rulings that have led to its loud complaints.

The Postal Service's first mistake occurred in the days after I filed DFC/USPS-19. The Postal Service found my interrogatory objectionable. Rule 25(b) encourages parties to use informal means to identify portions of interrogatories considered overly broad or burdensome. For not the first time in the history of Commission litigation, the Postal Service rejected use of informal means to resolve this discovery dispute.

Instead, the Postal Service filed a rather hostile objection.³ Closing the door to any reasonable resolution of this dispute, the Postal Service declared that “[t]he Postal Service has no intention of handing over to Mr. Carlson, in a proceeding he has purportedly initiated to address holiday service matters, nationwide information from the CBMS of the type that he has long sought in other contexts.” Objection at 4. In the objection, the Postal Service also misled the presiding officer by claiming that the burden of converting the data to a PC-readable format was so great that it would be unduly burdensome even to determine the magnitude of the burden. Objection at 3–4. The Postal Service quickly retreated from this position⁴ after I produced letters from the Postal Service describing the relatively simple conversion process.⁵ By a stroke of luck, I possessed letters that probably prevented my request for CBMS data from being dismissed as unduly burdensome.

The Postal Service’s objection contained another critical flaw. The objection either pretended not to recognize or failed to recognize that this proceeding concerns eves of holidays, not solely holidays. The Postal Service asserted that “this proceeding is limited to issues of holiday service.” Objection at 3. On this basis, the Postal Service concluded that 99 percent of the collection boxes in the CBMS database would be irrelevant to this proceeding. *Id.*

My motion to compel showed the Postal Service the broader relevance of this interrogatory — once again, information that the Postal Service could have learned from informal consultation. Now, nearly three months later, the Postal Service, faced with the obvious relevance of CBMS data for at least 27 districts, is trying to prevent disclosure of data for the remainder of the country. Arguably, the Postal Service should be precluded from litigating this issue because the original objection failed to comply with Rule 26(c). According to Rule 26(c), “In the interest of expedition, the bases for objection shall be clearly and fully stated.” By failing even to acknowledge the obvious

³ Objection of the United States Postal Service to Carlson Interrogatories DFC/USPS-19–21, filed June 4, 2001 (“Objection”).

⁴ Response of the United States Postal Service in Opposition to the Carlson Motion to Compel Regarding DFC/USPS-19–21 at 15–16, filed July 9, 2001 (“Opposition”).

⁵ Douglas F. Carlson Motion to Compel the United States Postal Service to Respond to Interrogatories DFC/USPS-19–21 at Exhibit 1, filed June 26, 2001 (“Motion”).

issue in this proceeding of early collections on eves of holidays, this objection completely failed to comply with Rule 26(c).

The failure to comply with Rule 26(c) goes to the heart of the dispute concerning the relevance of the CBMS data for districts other than the 27 that curtailed collections on the eves of holidays in recent years. Aside from promoting expeditious resolution of discovery disputes, Rule 26(c) exists as well to place the interrogating party on notice of the receiving party's grounds for objection. In this way, the interrogating party can file a motion to compel that addresses the central legal issues. The Postal Service's objection failed to place me on notice that the Postal Service would soon be contesting the relevance of CBMS data for collection boxes located in districts other than the 27 districts that curtailed collections on eves of holidays in the recent past.

As a result of the narrow objection, my motion to compel instinctively focused on the issues that the objection raised. I explained why the CBMS data were necessary to provide quantitative analysis of issues in this proceeding, and I explained that claims of privilege were not valid because the Freedom of Information Act would require these data to be produced. Importantly, since the Postal Service's objection did not raise the issue of the relevance of CBMS data for collection boxes located in districts other than the 27 districts that curtailed collections on eves of holidays in the recent past, I did not discuss this issue. Rather, I responded to the all-or-nothing approach embodied in the Postal Service's objection, essentially responding to the Postal Service's seemingly final proclamation that it would not turn CBMS data over to me.

When the Postal Service finally confronted me with the argument that the Postal Service should need to produce only data for the 27 districts that curtailed collections,⁶ I explained that this proceeding is not focused merely on evaluating past practices.⁷ Rather, consistent with the language of section 3662, the Commission is evaluating

⁶ Motion of the United States Postal Service for Partial Reconsideration of Presiding Officer's Ruling No. C2001-1/6, filed July 27, 2001.

⁷ Douglas F. Carlson Cross-Motion for Reconsideration and Answer to the Postal Service Motion for Reconsideration of Presiding Officer's Ruling C2001-1/6 at 11, filed August 3, 2001 ("Carlson Reconsideration").

ongoing service problems.⁸ Carlson Reconsideration at 11–12. At the time that I filed my motion to compel, I was under the impression that any reasonable observer would be persuaded by the information that the Postal Service was producing in response to my discovery requests that the practice of performing early collections on eves of holidays was an unwise practice whose potential harm to customers far outweighed any benefits. In writing my motion to compel, my focus, therefore, was understandably on proving the allegations in my complaint concerning past practices. However, the Postal Service's opposition to my motion to compel contained an alarming assertion: "It is the opinion of the Postal Service, however, that the issue of advanced collections on holiday eves has now been demonstrated to be essentially a non-issue." Opposition at 6. Notwithstanding the fact that the Postal Service is drawing conclusions without even waiting to read my testimony and brief, this statement raised the stakes in this proceeding and in this discovery dispute.⁹ Not only is the practice of performing early collections on eves of holidays alive and well, but the Postal Service also still does not see a problem with it. Therefore, early collections on eves of holidays are a nationwide problem promoted by current policy, and nationwide data are necessary to evaluate it. Consistent with the language of section 3662, I intend to focus on ongoing practices as well as past practices, with the hope of generating a public report from the Commission that will demonstrate the inadvisability of continuing to perform early collections on eves of holidays without adequate notice to customers.

It is convenient for the Postal Service not to believe my assertion that I intend to model the nationwide effects of curtailed collections. See, *e.g.*, Motion for Certification at 15. However, the sequence of motions-related events described herein explains exactly why I stated my concern for the continuing effects of this current policy at the time that I did. Objections raised late in a motions practice lead to late arguments of relevance. The Postal Service created this moving target.

⁸ Current and ongoing problems are well within the scope of the statute. Section 3662 provides that "[i]nterested parties who believe * * * that they are not receiving postal service in accordance with the policies of this title may lodge a complaint with the Postal Rate Commission[.]"

⁹ In April, the Postal Service was bemoaning the fact that I might not submit testimony. Motion of the United States Postal Service for Leave to Reply to the Douglas F. Carlson Answer in Opposition to the Postal Service's Motion for Reconsideration, and Reply to the Answer in Opposition at 7, filed April 20,

The Postal Service's motion for certification continues another interesting line of argument. The motion for certification is laced with assertions that DFC/USPS-19 is misappropriating the Postal Service's "scarce institutional resources." See, e.g., Motion for Reconsideration at 2. Instead of receiving a single interrogatory for a copy of the CBMS database that would allow me to conduct my own analysis, the Postal Service apparently would have preferred a series of interrogatories that would have required the Postal Service to engage in considerable manipulation, sorting, and analysis of CBMS data. See Motion for Certification at 9. The Postal Service now appears to be longing for precisely the types of interrogatories to which it regularly files undue-burden objections. Any seasoned observer of Commission proceedings knows that if I had begun my discovery with interrogatories requiring well more analytical effort than will be required to provide a copy of the CBMS database, the Postal Service would have filed the undue-burden objections that are always on the tip of the agency's tongue. I requested CBMS data and opted to conduct my own analysis for the purpose — ironically — of avoiding delays caused by discovery disputes.

The Postal Service is correct, of course, that I could have obtained the information necessary to conduct my analysis by posing interrogatories requiring the Postal Service to conduct my analyses of the CBMS data. (Of course, relevance objections to these interrogatories would have been a certainty. See, e.g., Opposition at 1–7.) I suspect that the only reason why the Postal Service is now open to this hypothetical line of discovery is because the Postal Service has lost a series of rulings concerning release of CBMS data and because my discovery deadline has passed. The Postal Service has no reasonable basis for believing that I would not have considered posing these types of interrogatories in exchange for withdrawing DFC/USPS-19 if the Postal Service had contacted me in late May or early June to propose this solution, before filing the original objection. Unfortunately, only now, after having lost two presiding officer's rulings, the Postal Service is suddenly proposing a self-serving solution and labelling it "cooperation and compromise." Motion for Reconsideration at 18. Appearing in the motion after several mind-numbing pages of

2001. Now the Postal Service does not care to wait to read my testimony before drawing conclusions about the issues in this proceeding.

intricate dissection of the presiding officer's rulings, this newfound embrace of cooperation and compromise at least provides some comic relief. Cooperation and compromise three months ago might have averted the bind from which the Postal Service is now struggling to extricate itself.

The presiding officer also should not lose sight of the fact that the Postal Service has never made any showing that producing CBMS records for a portion of the country would be less burdensome than producing records for the entire country. If anything, filtering data by district or data field probably would add to the complexity of the task. The presiding officer should continue to evaluate complaints about the effect of DFC/USPS-19 on "*scarce institutional resources*," Motion for Certification at 2, with the recognition that DFC/USPS-19 as filed probably required fewer Postal Service resources than any other possible discovery approach. In addition, the presiding officer should note that the Postal Service has expended far more resources fighting release of CBMS data than it would have consumed by simply providing the data. This observation suggests that concern about public scrutiny of the data, not concern about use of "*scarce institutional resources*," is the true root of the protracted motions practice.

In sum, seen in its best light, the motion for certification essentially is nothing more than an appeal of the presiding officer's determination that nationwide CBMS data beyond the 27 identified districts are relevant to evaluating past and ongoing collection practices on the eves of holidays. If the data are relevant, the Postal Service must provide the data. This relevance question is not an important question of law or policy justifying the delay that an interlocutory appeal causes. Equitable considerations concerning delay also should influence the presiding officer's determination on the motion for certification. The presiding officer should look unfavorably on an appeal from a participant whose predicament is directly traceable to the participant's failure to use informal means to resolve a discovery dispute and to the participant's failure to advance available arguments in a timely manner in the original objection.

Protective Conditions

The second supposedly important issue of law or policy concerns protective conditions. I submit that the issue of protective conditions does not raise an important

issue of law or policy because the Postal Service has declined to explain how release of data that excludes the box address raises any identifiable security concern.¹⁰

I explained in my motion for reconsideration why release of CBMS data under protective conditions would have created an untenable situation for me. The restriction most relevant at present is the restriction to use the data only for analyzing issues in this proceeding. Aside from my objection on the basis of principle to Commission release under protective conditions of information that is publicly available, to expedite this proceeding I would not object to a condition to use CBMS data only for analyzing issues in this proceeding if a reasonable way existed for me to document the source of CBMS data that I sought to use for purposes outside the scope of this proceeding. That is, if I discussed posted collection times in the future for purposes not related to this proceeding, I would be hard pressed to prove that I obtained the information from a source other than the CBMS database, which was provided under protective conditions in this proceeding. Such alternative and hard-to-document sources might be visual observation of collection boxes or telephone calls to 1-800-ASK-USPS. In short, the problem arises because the data that would be provided under protective conditions are the same data that are posted on collection boxes or available from 1-800-ASK-USPS.

In the three years since I began examining posted collection times on collection boxes for compliance with the minimum national service standards specified in Chapter 3 of the POM, the Postal Service has cast at least two nationwide nets on some of my correspondence concerning collection times, and at least one district has done the same. If I had the time and inclination, I suspect that a series of FOIA and Privacy Act requests would uncover many more such examples. The two nationwide nets also spread false information about me. The second one was particularly egregious, and the person who drafted the memo informed me later that the memo included my name not because I had engaged in the activity described but rather because Postal Service legal counsel advised him to include my name. Judged against my past experience, I believe that my fear is legitimate that the Postal Service might use a protective condition

¹⁰This point is particularly compelling because the security concerns asserted for provision of CBMS data *including* the box address are not persuasive. Removing the box address eliminates the discussion of employees' line of travel that underlies the previous unpersuasive argument about security concerns.

restricting my use of CBMS data to analyzing issues in this proceeding as a tool for harassment or retaliation. Therefore, I will not sign the protective conditions proposed in POR C2001-1/6 for release of CBMS data. If I do not have this information, my ability to pursue this complaint will be hampered, but ultimately I must place a higher priority on protecting myself against legal harassment or retaliation from the Postal Service.

POR C2001-1/10 fashioned a reasonable compromise: The Postal Service shall provide nationwide CBMS data without protective conditions; however, to alleviate security concerns, the Postal Service may suppress the box address. This solution clearly eliminated any security concerns that even the most clever postal inspector could ever have dreamed up. Obviously unable to explain why CBMS data not containing the box address would implicate a security concern, the Postal Service punted this supposedly important issue of law or policy by asserting, simply, that "the Postal Service is not prepared even to address the security aspects of the alternative solution." Motion for Certification at 22. One must conclude that the Postal Service would have mentioned at least one security concern in this motion for certification if it could have thought of one. In any event, since the Postal Service has declined to state a security concern at the appropriate opportunity, the Postal Service should be barred from asserting any further argument explaining why a security concern exists for releasing a database of posted collection times of boxes for which no address is provided.

Thus, no appeal of this supposedly important issue of law or policy concerning protective conditions is necessary. The Postal Service has not shown why a security concern exists surrounding CBMS data that do not include the box address. Therefore, no protective conditions are necessary. The compromise solution developed in POR C2001-1/10 is sound.

This conclusion leads to another important point concerning Postal Service suspicions about my "true intent" for requesting the CBMS data. If no protective conditions are necessary, CBMS data that do not include the box address clearly are agency records subject to disclosure under FOIA. FOIA was "designed in part to 'provide the means by which the people of this country can become informed and thus

be able to scrutinize the activities and operation of their Government.” *Getman v. NLRB*, 450 F.2d 670, 680 (D.C. Cir. 1971) (quoting Senator Dirksen). The Supreme Court held that the clear congressional objective of FOIA is to “pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny[.]” *Department of Air Force v. Rose*, 425 U.S. 352, 361, 96 S.Ct. 1592, 1599 (1976). If an agency would be required to disclose information under FOIA, I am aware of no case law that would allow the agency to argue for restrictions on the use of this information when the information is disclosed in response to a discovery request in a legal proceeding. Therefore, even if the Postal Service’s repeated speculation on my “true intent” for filing DFC/USPS-19 were anything more than a baseless allegation, the Postal Service still would be unable to justify protective conditions. Certainly the Postal Service’s primary fear — public scrutiny of posted collection times contained in the CBMS database — would not strike a chord with the Supreme Court as a basis for restricting the use of the information. Protective conditions in this proceeding for CBMS data that the Postal Service would be required to release under FOIA would be inconsistent with the letter and spirit of FOIA.

One final note underlying the absurdity of the Postal Service’s argument is worth highlighting. The Postal Service refers to an unspecified “potentially abusive use of the data for purposes unrelated to this proceeding.” Motion for Certification at 21. This sentence leaves one wondering which kind of lawful use of CBMS data could possibly constitute an “abusive use” of the data. How does a member of the public “abusively use” data? By scrutinizing it? Once again, the Postal Service’s argument for certification of this appeal crumbles.

Given the Postal Service’s failure to articulate a single security concern for CBMS data that do not include the box address, the agency’s fear of public scrutiny of the data remains the only explanation for the persistent attempts to prevent disclosure of the data.

Speculation Concerning Intent

The preceding mention of my “true intent” leads to a broader issue. Speculating about my supposed true intent in filing DFC/USPS-19 — in fact, in filing the complaint

itself — seems to have become one of the Postal Service's favorite pastimes, if not obsessions. To the extent that the presiding officer finds any of the Postal Service's arguments even the least bit appealing, two observations of my actions should dispel any concerns about my integrity or the integrity of this proceeding.

First, if my purpose in initiating this proceeding or in filing DFC/USPS-19 was primarily to obtain a copy of the CBMS database, I would appear to have misfired when I instead filed a complaint concerning collections on Sundays, holidays, and eves of holidays. If my main purpose had been to obtain CBMS data, I could have filed a complaint alleging that weekday and Saturday collection schedules have been shifted to earlier hours in recent years as local postal managers have circumvented the national service standards in an attempt to inflate EXFC scores. As a consequence, the collection schedules that result are not adequate. I possess a sufficient amount of knowledge and information on collection times that, I believe, would sustain a complaint if I desired to file one. If the Postal Service's theory were correct, my decision to file a complaint concerning collections on Sundays, holidays, and eves of holidays would seem to have been a rather clumsy way to obtain the CBMS data if my true intent in filing the complaint were to obtain the data.

Second, the progression of discovery in this proceeding belies the Postal Service's unsubstantiated allegations recurring throughout the motion for certification that this complaint somehow jeopardizes the integrity of the section 3662 service-complaint process. This proceeding is a model service-complaint proceeding. My discovery requests have been relevant and productive. Except for one interrogatory that was ruled irrelevant because it requested information that the Postal Service essentially had already provided in a different form,¹¹ the Postal Service has failed to convince the presiding officer to invalidate a single interrogatory on the grounds of relevance. If an "abuse of process" on my part is present, Motion for Certification at 22, the evidence for this assertion is sorely lacking.¹²

¹¹POR C2001-1/5, Presiding Officer's Ruling on Motion to Compel the United States Postal Service to Respond to Interrogatory DFC/USPS-10(b), filed July 18, 2001.

¹²The Postal Service's motions practice concerning DFC/USPS-19 is another story entirely.

More fundamentally, the factual allegations contained in my complaint have been proven true. Indeed, as I will argue later in this proceeding, the discovery responses to date suggest the following conclusions:

1. By eliminating collection and processing of outgoing First-Class Mail on many holidays, the Postal Service has changed the nature of postal services on a nationwide or substantially nationwide basis without first obtaining an advisory opinion under section 3661(b);
2. Nationwide, collection and processing of outgoing First-Class Mail on many non-widely-observed holidays is haphazard and unpredictable. Holiday service levels vary from postal area to postal area and from plant to plant and from year to year;
3. Serious questions about adequacy of service exist, particularly in areas where plants do not process outgoing First-Class Mail on non-widely-observed holidays that fall on Mondays; thus, customers do not have access to outgoing mail service for two consecutive days;
4. The Postal Service does not adequately inform customers of holiday collection and processing services;
5. Current Postal Service policy permits final collections on eves of holidays prior to the time posted on collection boxes;
6. The Postal Service does not adequately inform customers of changes in collection schedules on eves of holidays;
7. Some postal managers completely eliminated collection and processing of outgoing First-Class Mail on Christmas Eve.

Postal Service assertions that I filed this complaint for some latent, sinister purpose simply do not comport with the facts. Every factual allegation in my complaint has been proven true. As a result of my discovery, the Commission has a wealth of evidence to support recommendations to the Postal Service in the Commission's public report on ways to address these problems.

If any important issue of law or policy exists for the Commission's consideration, the issue is the persistence with which the Postal Service levels unsubstantiated allegations concerning the true motives of a person who files a service complaint, especially when the complainant's allegations have been fully substantiated during the course of the proceeding. Interrogatory DFC/USPS-19 merely provided the Postal Service more grist for its mill. Given that I devote considerable attention to issues related to collection services, I cannot possibly appease Postal Service suspicions about my true intention in filing the interrogatory or the complaint. If I had not acknowledged my interest in the subject matter, the Postal Service would be accusing me of hiding this interest in the data. Recognizing this potential, and consistent with my long-term practice of honestly representing my legal positions and personal motivations in documents filed with the Commission, I acknowledged that I might use CBMS data for purposes within and outside the scope of this proceeding. Carlson Reconsideration at 7–8. However, I observed that no law or policy restricts the purposes for which a person may use publicly available information provided during a public hearing. *Id.* The Postal Service had a field day with this acknowledgement. Confronted by an agency intent on repeatedly questioning my motivations — and, ultimately, my integrity — I cannot prove the truth of my representations to the Commission except by demonstrating the absence of any factual basis for the Postal Service's allegations. The Postal Service effectively appears to be advocating a self-serving rule that would prohibit a party from filing a discovery request for relevant information if the party has an additional interest in the information that extends beyond the scope of the proceeding.

I doubt that Congress enacted section 3662 with the intent of prohibiting, as a sort of precaution or punishment, a person who files a service complaint from obtaining through discovery information relevant to proving her complaint if she happened to have a separate, independent interest in that information as well. I also doubt that Congress would condone Postal Service efforts to stymie the discovery process by alleging unsubstantiated ulterior motives by the person who filed the complaint. Moreover, by using the term “interested parties” in section 3662, Congress may even have expected that persons who file service complaints under section 3662 would be personally interested in the postal matter at issue in the complaint. If this interpretation

were not Congress' intention, the term "interested parties" seemingly would be redundant, and "parties" would have sufficed to give the statute the same legal effect.

Along these lines, a member of the public who exercises his statutory right to participate in the ratemaking process is likely to have an interest in postal issues. Participation in the ratemaking process leads to further knowledge about and interest in postal issues. I probably would not have focused on collections if my participation in rate cases had not led to a heightened interest in scrutinizing postal operations. Now the Postal Service wants to punish me for the consequences of my participation in rate cases by preventing me from obtaining data necessary to prove my complaint on the grounds that I have an additional, independent interest in these data. Surely Congress did not intend to allow the Postal Service to discourage public participation in postal matters by repeatedly pointing to a complainant's interest in postal issues as a supposed ulterior motive for discovery requests.

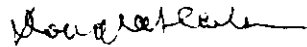
I trust that I have discredited the Postal Service's attacks sufficiently well to permit the presiding officer to determine that the Postal Service's supposedly important issues of law or policy are nothing more than another round of argument over a discovery dispute that the presiding officer has already properly resolved. Consequently, certification of the appeal does not meet the criteria of Rule 32.

Conclusion

In summary, the presiding officer should deny the Postal Service's motion for certification. The Postal Service's repeated assertions of previously dismissed arguments do not transform those arguments into important issues of law or policy. Belatedly asserted bases for objection similarly do not transform a dispute into an important issue of law or policy; they merely cause the entire dispute to be a moving target. Finally, the presiding officer should not allow the Postal Service to use the certification process to appeal an adverse decision that it could have avoided by use of informal consultation to resolve the discovery dispute. For these reasons, I oppose certification of this appeal.

I would support certification of this appeal under only one circumstance. If the presiding officer denies certification, under Rule 32(c) the Postal Service could appeal yet again. If the presiding officer determines that another appeal from the Postal Service is likely as a delay tactic, I would support consideration of the appeal by the full Commission now simply to eliminate further delays. In that case, the Commission should deny the appeal and uphold the reasonable compromise provided in POR C2001-1/10.

Respectfully submitted,

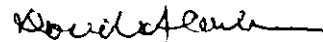


Dated: September 4, 2001

DOUGLAS F. CARLSON

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the required parties in accordance with section 12 of the *Rules of Practice*.



DOUGLAS F. CARLSON

September 4, 2001
Santa Cruz, California